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EXAMINER

NGUYEN, CHI Q

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 2

Application Number 09/535,457

Filing Date: March 24, 2000

Appellant(s): BAIJ, FRED CHRISTIAN

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Baij Fred Christian

GROUP 3600

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 8/26/2002.

And Examiner apologizes about the typographical error for the application serial number from the last Office Action. Correction had been made.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The amendment after final rejection filed on 7/3/02 has been entered. And the amendment after final rejection filed on 7/7/2002 has not entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Claims 1-11 and 65 stand or fall together as a single group directed to a bundle of framing lumber product.

Claims 12-30 stand or fall together as single group directed to individual pieces of framing lumber product.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,845,858 Thomas 7-1989

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-30, 65-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varoglu (US 5,782,054) in view of Thomas (US 4,845,858).

Varoglu discloses a wood wall structure comprising a top plate 10, a bottom plate 12 made of nominal 2X4 in. lumber, both plates 10 and 12 having first, second ends, lengths there between, front, back surfaces, opposing sides extending between the front and back surfaces along the length and thickness dimensions between the front, back, surfaces, a longitudinal groove 14, a plurality of vertical studs 20 extending between the bottom plate and the plate 10, 12, respectively, and evenly spacing along the plates, central sheath panels 16 are contained within a pair of nominal 2x2 in. lumber studs 36 (figs. 1-7 col. 2-4).

Varoglu does not disclose expressly a plurality of stud locator markings spaced along the lengths of elongated pieces of lumber, each of the plurality of stud locator markings comprising marking material deposited directly on the respective elongate piece of lumber at surface, including sets of 2x2 stud locator markings, spaced about 8, 16, 24

inches, leading edge-to-edge, variations in spacing between stud locator markings on a framing lumber product being consistently no more than 0.13 in. leading edge to edge being devoid of location marking indicators away from stud locator markings appearance differences, which are not color differences.

Thomas teaches a stud locating tape 22 available in roll making type tape base in 1., 3, 5 inches widths and adhesively secured to surfaces, a stud locating tape 22 itself presents colored indicia portions 22a, 22b, 22c being representative for 16, 24, 48, stud 17 centers (fig. 1, cols. 1-2).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify and combine Varoglu's lumber constructions with using Thomas' stud locating tape. The motivation for doing so would have been to provide constructors more accuracy of placement of the studs onto top and bottom plates thus it could minimized the installation time and cost saving.

With regards to the claims 2-6, 13-20, 24-28, 66-70, Varoglu and Thomas do not specifically teach interval of spacing and markings are not different in colors. Examiner considers it would performed as a functional equivalence as Applicant's invention and have been an obvious matter of design choice to apply stud marking locator directly on plates, since it has been held that rearranging parts of an invention involves only routing skill in the art. *In re Japikse*, 86 USPQ 70.

(11) Response to Argument

In response to Applicant's argument that there is no suggestion to combine Thomas (-858) and Varoglu (-054), the Examiner recognizes the references cannot be arbitrarily

combine and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken, as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971) references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosure. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, Thomas ('858) teaches stud-locating tape for building stud layout and Varoglu ('054) teaches wood wall construction. Thomas and Varoglu are analogous art because they both deal with building construction matters. Therefore, it is obvious to combine these references. With regards to the Applicant's argument that the marking tape 22 through out the length will interfere with direct surface-to-surface contact, create friction in securing the vertical studs in abutting relationship with the top and bottom plates, the lumber studs could be wet, oil, dusty and can interfere with good adhesion between marking tapes and studs, marking tapes can move ahead of the stud as the stud is being installed, the marking tape is not properly printed to be used with vertical studs, which makes it not suitable for use with Varoglu, material wasting if the stud dimensions are not accommodate with marking tape sizes, and no reference teaches or suggests a bundle of marked lumber. Examiner does not agree because the Applicant is claiming in claims 1-30 "a plurality of elongate pieces of lumber with markings" and in claims 65-75 "an elongate piece of lumber". Each of individual lumber pieces could be

used as vertical stud or top/bottom plates. Therefore, Applicant's argument with respect to joined lumbars/studs is improper, as claims do not recite joined lumbars/studs. On the other hand, as one skilled the construction art would know and capable to make adjustment to accommodate the marking tape on the studs. Furthermore, because of the typical marking tape is relatively thin (a fraction of a millimeter) thus joining the studs and end plates would not caused any interference in terms of dimension and friction between studs and end plates. In the construction business, one always encounters unevenness, variations in construction materials. To make adjustments to accommodate the particularities of the materials and building construction plan are common and well known in the construction business.

(12) Examiner's Answer, Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Chi Nguyen
CQN

JOSE V. CHEN
PRIMARY EXAMINER

10/29/2002